

## Committee of Thirteen Report

May 9, 2006

The Committee of Thirteen of the Benton County Quorum Court met Tuesday, May 9, 2006 at 5:00 P.M. in the Quorum Court Room, County Administration Building, Third Floor, 215 East Central, Bentonville, Arkansas.

11 JPs Present:	Adams, Allen, Harrison, Hill, Moore, Schindler, Sheridan, Summers, Tharp, Wolf, Wozniak
2 Absent:	Sampier, Stephenson
Others Present:	Judge Xollie Duncan, Judge John Scott, Richard McComas, Kathy Bannister, John Brown, Russ O'Dell
Media:	Jennifer Turner – Daily Record, Joe Askins – Morning News

JP Tim Summers called the meeting to order at 5:00 p.m.

### **PUBLIC COMMENTS:**

Robert Kossieck stated that he wished to address the public comments format, and that it was important to move the Quorum Court into the 21<sup>st</sup> century by allowing public comments to take place following each agenda item. He also suggested a small period of time at the end of the meeting in order for the public to bring items to the attention of the court that were not on the agenda. He said there were several excellent comments made at the last Committee of Thirteen meeting, in particular the suggestion that the time period allowed each person be extended to five minutes due to the complexity of the issues involved. He said he hoped that they would give this very serious consideration and bring the court up to date.

Terry Phillips seconded Mr. Kossieck's arguments, and commented that having public comments following the agenda items does not cause problems for Washington County, and it is arrogant for the members of the Quorum Court to assume that no one in the audience has anything productive to add. He said that the community could be very helpful in aiding the court in how they make decisions.

Cheryl Murphy stated that she wanted to bring up an issue that has been asked about repeatedly during her campaign, and that is the possible incorporation of Bella Vista. She said she would like for the Court to talk to the public about the issue, not in terms of being for or against, but how they plan to deal with it if it occurs.

Judith Day stated that she is interested in everything that the Justices have to say, and would like to know where they are stand on issues because they know how she feels. She asked that they each use their microphones so that everyone can hear them.

## **NEW BUSINESS:**

### **1. Resolution Request – Support of Request for Additional Judge Position**

Judge John Scott stated that they have started the process of getting a new judgeship created in Benton County, and that asking for the Quorum Court's support is the first step. He said they would be asking for the support of other organizations in the county as well. He said they have had the same number of Circuit Judges for many years, and they are all aware of the population growth the county has experienced. He said they anticipate the new judge to take office on January 1, 2009, so there is plenty of time to plan for the chambers and support staff. He said they started the process about 8 or 9 months ago when they realized that their dockets had exploded, causing what had been a 5-to 6-month waiting period for a trial date to turn into a 10- or 11-month waiting period, and they anticipate that waiting period to grow even longer.

JP Moore asked since the judgeship was being requested for the West district, if the chambers would be in one of the smaller cities or in Bentonville. Judge Scott explained that the 19<sup>th</sup> Judicial District West is Benton County. JP Allen made motion to forward the request to the May 25, 2006 Quorum Court meeting, seconded by JP Adams. JP Schindler stated that they would have approximately two and a half years to prepare for a new judge once approval is given by the Arkansas Legislature, so they had better get started on plans for courtroom space. JP Wolf stated she wholeheartedly supported this resolution, and it is something that they have been looking at for a long time. JP Summers stated that even if they supported the Resolution, there was no guarantee that the position would be approved, so they will need to be working on their legislators. Motion passed by unanimous show of hands vote.

### **2. Discussion: Election Commission Report**

Election Commission Chairman John Brown gave a report to the Committee on the problems they are experiencing with the new voting equipment and ballots. He said they are very frustrated, and that everyone is aware that there are problems all over the state. He said that basically, ES&S has bitten off more than they can chew. He said they were able to get ballots to the County Clerk's office for early voting, and absentee ballots began going out on Wednesday. He said at present they are still working on getting additional touch screen machines for early voting in the County Clerk's office, and explained the many problems they have encountered in getting equipment and materials from ES&S. He said that they had hoped to have additional early voting sites for the Primary Election, but did not have time, personnel, or equipment to get that set up. He said they will have to have the machines delivered to the polling sites, because they are too bulky for most of the election sheriffs to handle. He added that they will be coming to the Quorum Court to request additional facilities, because the current space is not adequate for storing the new electronic machines. JP Summers asked if there was a problem with the chain of custody of the machine when it is being moved from the Election Commission Office to the polling site. John Brown stated that he was not sure what the requirements were, but that they have adequate control over the internal part of the machine. He said they have to be opened with a key and will be sealed until they are opened by the election sheriffs. JP Summers asked how many machines the county currently has. John Brown stated that they have ordered enough to satisfy the legal requirements for this election, and the Secretary of State is holding money until the end of the year with which they can order more if that is what the Quorum Court decides they want to do. JP Summers asked if they had been able to adequately train the poll workers. John

Brown said they had not been able to because of the lack of technical support from ES&S, but hope to have more training before the General Election in November. JP Wolf asked if they had enough machines for each polling site. John Brown stated that they had enough to meet legal requirements, and mentioned the problems they are having in getting the software and support for the Central Scanner that will count ballots. JP Allen suggested seeking remedies from ES&S for their failure to perform. JP Moore asked if there was an option of using the punch card system. John Brown stated that Federal Law had outlawed the punch cards. JP Adams asked John Brown to confirm that a person will be able to vote, and that a person's vote will be counted, it just may take the Election Commission a lot longer to count them. John Brown agreed, and said they will hold an election on held May 23, 2006 even if they have to hand count the ballots. JP Adams asked if there was anything they could do to help. John Brown stated that they are now getting assistance from the Secretary of State's office. JP Summers stated that he has heard from people who have used touch screens that they work very well. John Brown said that they are easy to use for the voter, but are very hard for the Election Commission to deal with.

### **3. Resolution Request – Application for Arkansas Historic Preservation Program-Certified Local Government Grant**

JP Schindler made motion to forward the request to the May 25, 2006 Quorum Court meeting, seconded by JP Sheridan. JP Schindler stated that several members of the Historic Commission are interested in attending a training seminar in Baltimore, and a grant of up to \$4,000 is available to pay for the expenses. JP Hill asked if all of the expenses including food and lodging would be paid strictly out of the grant. JP Schindler stated that was correct. Grants Administrator Kathy Bannister stated that the grant will reimburse the county for the expenses, but they would not commit to the trip until they are sure they have received the grant.

### **4. Appropriation Ordinance Request – City of Highfill Grant Funds**

Comptroller Richard McComas stated that this ordinance request was forwarded from the Finance Committee, and is a \$75,000 pass-through grant for contract road work which will not be spent until the money is received from the City of Highfill. JP Allen made motion to forward the request to the May 25, 2006 Quorum Court meeting, seconded by JP Hill. Motion passed 11 for, 1 abstained (Adams).

### **5. Discussion: Public Comments Format**

JP Summers stated that JP Sampier had provided a statement describing how public comments were conducted at Rogers City Council meetings. JP Allen stated that he was familiar with the guidelines since he had served on the Rogers city council, and would encourage adopting them because they had worked well. JP Moore stated that he did not think they addressed the main point of contention, which is that public comments are being heard before business is discussed. JP Allen noted that the order of business is set by ordinance, so if they make a change it will have to be done by ordinance. JP Harrison said he was only aware of complaints about the Quorum Court, and it was his opinion that the various committee chairs could set their own order of business. He suggested a trial period before amending the ordinance. JP Schindler stated that it has worked well for a number of years, and he saw no point in change for the sake of change, and he would strenuously oppose a situation where discussion turned into debate with the

audience. JP Schindler also stated that comments can be made in three minutes if a person is succinct, which would be to the benefit of all concerned.

JP Moore stated that he is personally in favor of the format presented by JP Sampier, and made motion to have Public Comments after Other Business but before Announcements. Motion died for lack of second. JP Sheridan stated that he is not in favor of public comments at the end of the session, because if someone has something pertinent to say it needs to be said before a vote is taken. He said he would highly object to having comments after they have voted on something. JP Tharp asked if the rules apply only to Quorum Court meetings. County Attorney Ed Gartin stated that all committee meetings have to follow the same order. JP Summers stated that committee chairs have always conducted the committee meetings informally, and he felt that the small size and limited subject matter had always allowed for sufficient public input.

JP Adams asked for clarification of the legal requirements. County Attorney Ed Gartin stated that only one law speaks to citizen participation, and the Attorney General's opinion on this specific issue is that having public comments at the end of the meeting preceding Announcements will not satisfy the legal requirements. He quoted the law which states that "in any meeting required to be open to the public, the county Quorum Court, committees, etc... shall adopt rules for conducting the meetings which afford citizens a reasonable opportunity to participate prior to the final decision." He explained that the term "reasonable opportunity" is not defined anywhere in the law, and in the past the Attorney General has left it up to Quorum Courts to interpret it. He added that there are some opinions which state that only a final determination is fair game for public comments, which would mean that only the third and final reading of an ordinance is required to have public comments. He said in that respect, our current ordinance is much broader than the law requires. JP Adams stated that if the Attorney General is leaving it up to the counties, then they can easily define it however they see fit to get the proper input from the public. JP Allen noted that only Quorum Court members may participate in debate. County Attorney Ed Gartin stated that was true under the law.

JP Allen stated that they are a democratically elected body, subject to being replaced every two years. He said that it is not practical to allow public comments after every single agenda item, because the meetings would be out of control and end in frustration for everyone. He said he believes that they need more participation from citizens, and he believes the three-minute time limit makes people nervous and they may need more time so they can relax and know that they will be heard while discussing the county's increasingly more complex issues. He said he knows that no one wants to be here a long time, but they should have been considered that before they ran for office. He noted that while the very controversial issue of building permits was being considered by the Rogers city council, they did not have marathon meetings and there was no time limit on public comments. JP Tharp stated that the fact that they are having this discussion is proof that the public is being heard, and questioned exactly what the procedure would be for allowing public comments during discussion of each agenda item. He asked County Attorney Ed Gartin if they would be violating the law if they allowed public comment before they voted on an item. JP Sheridan asked County Attorney Ed Gartin if the Quorum Court could pass whatever format they chose and be legal as long as it was done by ordinance. County Attorney Ed Gartin said that was incorrect, that the ordinance would have to comply with A.C.A. § 14-14-109, which states that the public must have a "reasonable opportunity to participate prior to the final decision". He listed several ways they could accomplish that, and noted that a reasonable time limit could also be incorporated. JP Sheridan noted that the Rogers guidelines are very similar to the Quorum Court's, with 30 minutes of public comments before the agenda items. JP Wolf

stated that everything discussed at the Committee of Thirteen is forwarded to the Quorum Court with no final decision made, and suggested moving comments to the end of the Committee of Thirteen meeting and leaving them as they are for the Quorum Court meeting. JP Hill asked if it would be possible to do a trial run for a few months. County Attorney Ed Gartin stated that they can vote to suspend the rules to change the order without changing the ordinance.

JP Tharp asked if anyone had firsthand knowledge of how the procedure works at Washington County. JP Wozniak suggested a trial run at the committee level instead of Committee of Thirteen or Quorum Court, and noted that the time limit could be extended because those meetings usually have a smaller agenda. JP Summers stated that perhaps they could suspend the rules on a particular issue that was generating a large amount of interest. County Attorney Ed Gartin stated that asking people to sign up to speak on a particular issue before the meeting would be a reasonable restriction. JP Adams suggested a trial run at the May 24, 2006 Environmental Committee meeting. JP Allen stated that issues go through a series of meetings and multiple votes, and are well-publicized. He applauded the members of the audience and said that is how democracy works. He also noted that we as citizens do not get to comment on everything that is enacted by our federal and state governments, but we can vote to convey our opinions.

JP Tharp asked County Attorney Ed Gartin if it would be OK for him, as Environmental Committee Chair, to entertain a motion to suspend the rules, and if the motion passes change the format to allow public comments at the end of the meeting. County Attorney Ed Gartin stated that it would be safer to keep the current format since it complies with the ordinance, but allow additional comments after the agenda items if someone desires to speak. JP Tharp asked if he could establish the time limits as needed, and close the comment period if it becomes necessary. County Attorney Ed Gartin said that he could. JP Tharp stated that he would try it at the next Environmental Committee meeting.

#### **OTHER BUSINESS:**

JP Summers recognized Comptroller Richard McComas, and apologized for not giving him notice but said that he would like for the committee to be able to ask some questions regarding the impact that the Bella Vista incorporation will have on County revenue. He said that they are looking at a loss of approximately \$3.75 million, and the Finance Committee will be working on two different budgets because the budget will have to be approved shortly after the incorporation vote takes place. He added that they estimate a \$1 million increase in sales tax revenue for 2007, and the Road Department spends approximately \$500,000 per year on Bella Vista roads, in addition to sending a patch crew once a month. Richard McComas stated that there is no way to measure the property tax loss without knowing the exact value of each piece of property that will be annexed, but the county will lose  $\frac{1}{2}$  of the 1.2 mills that is allocated for County Road. Richard McComas stated that the sales tax loss will be approximately \$3 million based on current dollars. He said that they have estimated \$1 million increase in sales tax revenue, but that growth is not necessarily related to just Bella Vista.

JP Allen stated that they always account for a sales tax revenue increase in every budget, so they cannot count it against the loss. JP Moore asked if they were looking at the same revenue minus \$2.5 million. Richard McComas stated that you could not say that, because there will obviously be an increase in property tax. He explained that the 1.2 mills generates approximately \$1.5 million, and although they cannot know exactly how much that amount will be reduced without knowing the individual property values, he believes it will be between \$300,000 and \$400,000.

JP Harrison asked if there had been any discussion concerning the services that Bella Vista is going to need, and the possibility of them leasing those services from the county. Richard McComas stated that he believed they would be all on their own if they vote to incorporate. JP Wozniak stated that there is a Transition Committee in place, and they plan to use the P.O.A. to provide any services that they need, and pay for them with turnback funds as they come in. JP Adams and Comptroller Richard McComas discussed the possible effects and outcomes of the Bella Vista incorporation on sales tax growth and the loss of revenue. JP Adams stated that he estimates the net net loss to be approximately 5% of the current budget. Richard McComas stated that he disagreed. He said that we have never had a year where revenues have exceeded expenditures, and they have been spending from reserve funds for the last several years. The committee discussed what effect the 2010 census will have on the county's share of sales tax revenue. JP Wozniak said that when a new census is done in Bella Vista, the population will go from 16,000 to 26,000. Richard McComas stated that the county wide sales tax will not be affected by new census numbers until a county wide census is done. JP Allen stated that more development is going in at Pinnacle, and he believes we will get a bigger than expected increase in sales tax revenue from Oklahoma, and Washington and Madison County residents coming there to shop.

JP Sheridan stated that they have discussed all the good news and bad news, but the bottom line is that in 2001, the county's share of sales tax went from 48% to 31% due to the census, and with all the annexations that are going on, the county should be prepared to take a drastic hit after the 2010 census.

#### **ANNOUNCEMENTS:**

JP Tharp announced that the Environmental Committee would be meeting on May 24, 2006 at 5:00 p.m.

The meeting was adjourned at 6:25 p.m.